

REMARKS

35 U.S.C. § 101 Claim Rejections

By the Board of Patent Appeals and Interferences' new ground of rejection pursuant to 37 CFR 41.50(b) mailed May 13, 2005, the Board of Patent Appeals and Interferences (hereinafter the "Board") has rejected claims 34-37 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, the Board has asserted that "[t]he claimed invention taken as a whole is directed to a mere computer program (a program listing), i.e., to only its description or expression [and that] . . . [t]he claim is descriptive material per se and hence non-statutory." (See Decision on Appeal No. 2005-0699, page 8, paragraph 3.) In addition, the Board has asserted that "[a] computer program is merely a set of instructions capable of being executed by a computer; the computer program itself is not a process [and that a] . . . claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, is non-statutory functional descriptive material. See MPEP § 2106 IV.B.1.(a)." (See Decision on Appeal No. 2005-0699, page 8, paragraph 3.)

Claims 34 and 35

Claims 34 and 35 have been amended. Applicants respectfully submit that no new matter has been added by the amendment to claims 34 and 35. Applicants respectfully submit that claims 34 and 35, as amended, comply with 35 U.S.C. § 101.

Claim 36

Since dependent claim 36 depends on independent claim 35 and since claim 35, as amended, complies with 35 U.S.C. § 101, Applicants respectfully submit that claim 36 complies with 35 U.S.C. § 101.

Claim 37

Since dependent claim 37 depends on claim 36 and since claim 36 complies with 35 U.S.C. § 101, Applicants respectfully submit that claim 37 complies with 35 U.S.C. § 101.

Conclusion

It is therefore clear that claims 1-3, 5-23, and 25-37 comply with the requirements of 35 U.S.C. §§ 101, 102, 103, and 112. The application is therefore in condition for allowance. Early notification to that effect is respectfully solicited.

In the event that any issue remains unresolved, the Examiner is invited to telephone the undersigned at 408-927-3377.

Respectfully Submitted,



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